

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 3723 of 1996
For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KALPESH J JAISWAL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

Heard learned advocate Mr. H.R.Prajapati for
M/s. Thakkar Associates for the petitioner and Mr.
Nigam Shukla, learned APP, for the respondents.

This Special Civil Application is directed
against the detention order dated 25th April 1996, passed
by the District Magistrate, Vadodara, whereby the
petitioner has been detained under the provisions of the
Gujarat Prevention of Anti Social Activities Act, 1985.

The detention order dated 25th April 1996 was
executed on the same day, i.e. 25th April 1996 and since
then the petitioner is under detention lodged at the
District Jail, Rajkot.

The present Special Civil Application was filed

in this Court on 16th May 1996 and on 17th May 1996 rule returnable on 24th July 1996 was issued. However, so far, no reply has been filed by the respondents, nor has any affidavit been filed by the detaining authority.

The grounds enclosed with the detention order show that the detaining authority has taken into consideration the allegations of six criminal cases registered against the petitioner under the Bombay Prohibition Act during the period from 22nd April 1991 to 1st October 1995. Apart from these six criminal cases, the detaining authority has also taken into consideration the proceedings initiated against the petitioner under Section 107 of the Code of Criminal Procedure; Chapter Case No. 17 of 1995 under Section 93 of the Bombay Prohibition Act; and Chapter Case No. 6 of 1993 under Section 93 of the Bombay Prohibition Act. The detaining authority has also considered that the petitioner was engaged in the business of stock and sale of unauthorised liquor; beating and threatening the innocent person; and creating disorder and an atmosphere of a terror in the area of Naswadi. The detaining authority has also considered the statements of four witnesses made against the petitioner with regard to criminal and anti-social activities in addition to sale of unauthorised liquor. The detaining authority came to the conclusion that in the interest of peace loving citizens of the area of Naswadi and to prevent the petitioner from continuing his anti-social activities, it was necessary to detain him.

The detention order is challenged on more than one grounds, but the learned advocate for the petitioner has kept his arguments confined to the question that, even if the allegations levelled against the petitioner are taken to be true, they do not constitute a case of breach of public order, and at the most it would constitute a case of breach of law and order.

I have considered the submissions made on behalf of both the sides. In view of the decision of this Court rendered on 4th October 1996 in Special Civil Application No. 3879 of 1996, it is clear that such allegations do not constitute a case of breach of public order. The allegations and the materials which have been relied upon by the detaining authority can at best constitute a case of breach of law and order. It is, therefore, apparent that the detention order has been passed not on the grounds which can be said to be germane to breach of public order. The detention order cannot be based on the ground of breach of law and order and, hence, the order of detention cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned order dated 25th April 1996, passed by the District Magistrate, Vadodara, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner forthwith and set him at liberty, if not required in any other cases. Rule is made absolute.

(swamy)****